IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 602 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DINESH ALIAS BHURIYO PRATAPSINH THAKOR THRO'

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 602 of 2000
MR ASHOK N PARMAR AND MR PRAVIN GONDALIYA
for Petitioner.
MR HL JANI, Learned APP for Respondents

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/07/2001

ORAL JUDGEMENT

1. Heard Mr.Pravin Gondaliya, learned advocate appearing on behalf of the petitioner and Mr.H.L.Jani, learned APP appearing on behalf of the respondents.

2. In the present petition, the order of externment passed by Dy. Police Commissioner, Zone-3, Ahmedabad City on 25/2/2000 and the order of the appellate Authority passed on 26/6/2000 are challenged by the petitioner under Articles 226 and 227 of the Constitution of India.

3. Mr.Pravin Gondaliya, appearing on behalf of the petitioner has raised various contentions challenging the externment order as well as order of the Appellate Authority. But according to him, one contention is enough to vitiate the order of externment which has been passed by the Dy. Police Commissioner, Zone-3, Ahmedabad City on 25/2/2000.

4. Mr.Pravin Gondaliya, learned advocate for the petitioner has argued at length that show cause notice was issued under Section 59 of the said Act by the Assistant Commissioner of Police. This can be gathered from notice at ANNEXURE-A at page-14 to the petition. Then he has also argued that ultimate order of externment was passed by the Dy. Police Commissioner on 25/2/2000. The learned advocate for the petitioner submits that when the proceedings were initiated by the Assistant Commissioner of Police after application of mind to the information received by him and when the reply was submitted to the said authority, there was no need or reason for the Deputy Commissioner of Police to exercise the powers of externment against the petitioner. The respondents have not explained as to why the powers were exercised by the Deputy Commissioner of Police though the proceedings were initiated by the Assistant Commissioner of Police. There is nothing on record to show that the case was transferred from one authority to another authority. It is not explained as to who transferred the matter and why the matter was transferred.

5. On this aspect of the case, the learned advocate for the petitioner has relied upon a decision of this Court (Coram : D.C.Srivastava,J.) in the case of Hussainmiya @ Jago Razakmiya Qadri Vs. State of Gujarat and Ors., reported in 1999 (2) GLH 786. The said observations and finding as found in para-(6) of the judgment may be reproduced for ready reference as follows :

> "6. Coming to the first stage, if the show cause notice is examined and the externment order is perused, it prima facie appears that the show cause notice was issued by the Assistant Commissioner of Police (Eastern Division) Rajkot City : whereas the impugned order was passed by the Deputy Commissioner of Police, Rajkot City, Rajkot. it thus appears from the record that the impugned order was not passed by the authority who issued the show cause notice after entertaining subjective satisfaction that it was

> necessary to extern the petitioner from the three districts. No affidavits has been filed explaining that the externing authority was actually the successor of the authority who issued the show cause notice. There is no material on record to infer that the authority who is issued the show cause notice was transferred and thereafter, no other officer was posted to succeed him and his business was allocated to the externing authority in addition to his work. Thus, from the material on record as it exists today, it can be said that the subjective satisfaction before issuing the show cause notice was entertained by one authority; whereas the externment order was passed by another authority."

6. There is no reason to defer from the said decision and the principle enunciated in the said decision which does not appear to have been challenged before any Higher Authority. Therefore, it is clear that if once such decision is followed then present petition will have to be allowed and the externment order has to be quashed and set aside on the ground that the proceedings were initiated by the Assistant Commissioner of Police and final order was passed by the Deputy Commissioner of Police without assigning any reason and explanation. Following the said principle in the said matter, I am of the view that the present externment order has to be quashed and set aside.

7. In the aforesaid view of the matter, this petition is allowed. The order of externment dated 25/2/2000 passed under Section 56 of the said Act by Deputy Commissioner of Police in Externment Case No.35 of 2000 and confirmed in Appeal by the Deputy Secretary, Home Department, Government of Gujarat under Section 60 of the said Act are hereby quashed and set aside. Rule is made absolute accordingly.

(H.K.Rathod,J.)

(vrpanchal)**